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UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

Case No. 07-12148 [BRL]

ALPER HOLDINGS USA, INC.,

Debtor.

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**DESIGNATION OF RECORD ON APPEAL**

On January 18, 2008, Ray Flake and Cathy Flake (the “Flake Plaintiffs”) filed a Notice of Appeal [Docket No. 124], appealing the Court’s Memorandum Decision and Order Granting Objection of Alper Holdings USA, Inc. to Proofs of Claim (Claim Nos. 20 and 21) Filed by Flake Plaintiffs (the “Order”) [Docket No. 123].<sup>1</sup> Pursuant to Federal Rule of Bankruptcy Procedure 8006, the Flake Plaintiffs hereby submit this Designation of Record on Appeal, designating the following documents and items to be included in the record on their appeal from the Order as follows:

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<sup>1</sup> On January 17, 2008, the Court entered an Errata Order, correcting certain grammatical and spelling errors appearing in the Order [Docket No. 125].

Item No.	Docket No.	Filing Date	Description
1.	67	11/14/2007	Objection of Alper Holdings USA, Inc. to Proofs of Claim (Claim Nos. 20 and 21) Filed by Flake Plaintiffs
2.	105	12/27/2007	Response of Ray and Cathy Flake to Objection of Alper Holdings USA, Inc. to Proofs of Claim (Claim Nos. 20 and 21) Filed by Flake Plaintiffs
3.	110	1/07/2008	Reply of Alper Holdings USA, Inc. to Response of Ray and Cathy Flake to Objection Filed by Alper Holdings USA, Inc. to Proofs of Claim Nos. 20 and 21
4.	119	12/17/2007	Transcript of Hearing held on December 13, 2007
5.	123	1/15/2008	Memorandum Decision and Order Granting Objection of Alper Holdings USA, Inc. to Proofs of Claim (Claim Nos. 20 and 21) Filed by Flake Plaintiffs
6.	125	1/17/2008	Errata Order
7.	124	1/18/2008	Notice of Appeal filed by Ray and Cathy Flake
8.			Amended Proof of Claim submitted by Ray Flake
9.			Amended Proof of Claim submitted by Cathy Flake
10.			Transcript of Hearing held on January 8, 2008
11.			January 9, 2008, Letter from Andrew Leblanc to The Honorable Burton R. Lifland
12.			January 11, 2008, Letter from Cliff I. Taylor to The Honorable Burton R. Lifland

Dated: January 24, 2008.

Respectfully submitted,

/s/ Douglas T. Tabachnik

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**STATEMENT OF ISSUES ON APPEAL**

On January 18, 2008, Ray Flake and Cathy Flake (the “Flake Plaintiffs”) filed a Notice of Appeal [Docket No. 124], appealing the Court’s Memorandum Decision and Order Granting Objection of Alper Holdings USA, Inc. to Proofs of Claim (Claim Nos. 20 and 21) Filed by Flake Plaintiffs (the “Order”) [Docket No. 123].<sup>1</sup> Pursuant to Federal Rule of Bankruptcy Procedure 8006, the Flake Plaintiffs hereby submit this Statement of Issues on Appeal with respect to their appeal of the Order as follows:

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<sup>1</sup> On January 17, 2008, the Court entered an Errata Order, correcting certain grammatical and spelling errors appearing in the Order [Docket No. 125].

1. Whether the Bankruptcy Court erred in granting the Objection of Alper Holdings USA, Inc. to Proofs of Claim (Claim Nos. 20 and 21) Filed by Flake Plaintiffs (the “Motion to Dismiss”).
2. Whether the Bankruptcy Court erred in considering evidence outside the face of the pleadings—*i.e.*, the Flake Plaintiffs’ proof of claims materials, and evidence relied upon by the Flake Plaintiffs when submitting their claims—in contravention of Federal Rule of Civil Procedure 12(b)(6).
3. Whether the Bankruptcy Court erred in failing to take all factual allegations made by the Flake Plaintiffs as true.
4. Whether the Bankruptcy Court erred in failing to consider all factual allegations made by the parties in the light most favorable to the Flake Plaintiffs.
5. Whether the Bankruptcy Court erred in failing to draw all reasonable inferences in favor of the Flake Plaintiffs.
6. Whether the Bankruptcy Court erred in failing to consider evidence submitted with the Flake Plaintiffs’ Response of Ray and Cathy Flake to Objection of Alper Holdings USA, Inc. to Proofs of Claim (Claim Nos. 20 and 21) Filed by the Flake Plaintiffs.
7. Whether the Bankruptcy Court erred in disallowing and expunging the Flake Plaintiffs’ claims under Bankruptcy Code, section 502, without allowing the Flake Plaintiffs an opportunity to conduct discovery.

8. Whether the Bankruptcy Court erred in failing to apply the standard appropriate for a motion to dismiss when considering the Flake Plaintiffs' claims and Alper's objection thereto.
9. Whether the Bankruptcy Court erred in concluding that Alper owed no duty to the Flake Plaintiffs to conduct its remediation of the Dickson Plant in a non-negligent manner.
10. Whether the Bankruptcy Court erred in concluding that Alper owed no duty to the Flake Plaintiffs.
11. Whether the Bankruptcy Court erred in concluding that, under Tennessee state law, to prevail on a claim for assumed liability, the Flake Plaintiffs were required to demonstrate that they relied on Alper's remediation activities at the Dickson Plant to the Flake Plaintiffs' detriment.
12. Whether the Bankruptcy Court erred in misinterpreting Tennessee state law regarding assumed liability.
13. Whether the Bankruptcy Court erred in concluding that the Flake Plaintiffs' alter ego claims may not be asserted against Alper as a matter of law.
14. Whether the Bankruptcy Court erred in finding that Nicholas Bauer was acting on behalf of Saltire and not Alper in overseeing or participating in the remediation at the Dickson Plant.

Dated: January 24, 2008.

Respectfully submitted,

/s/ Douglas T. Tabachnik

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